# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Kimble       ) Art Unit: 2174

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Serial No.: 09/775,692        ) Examiner: Ke

                )

Filed: February 2, 2001      ) 50N3463.01

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For:  WEB BROWSER PLUG-IN FOR TV  ) December 17, 2006

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                )

## APPEAL BRIEF

Commissioner of Patents and Trademarks

Dear Sir:

   This brief is submitted under 35 U.S.C. §134 and is in accordance with 37 C.F.R. Parts 1, 5, 10, 11, and 41, effective September 13, 2004 and published at 69 Fed. Reg. 155 (August 2004). This brief is further to Appellant's Notice of Appeal filed herewith.

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(1)　　**Real Party in Interest**

　　　The real parties in interest are Sony Corp. and Sony Electronics, Inc.

(2)　　**Related Appeals/Interferences**

　　　No other appeals or interferences exist which relate to the present application or appeal.

(3)　　**Status of Claims**

　　　Claims 1-30 are pending and finally rejected, which rejections are appealed.

(4)　　**Status of Amendments**

　　　No amendments are outstanding.

(5)　　**Summary of Claimed Subject Matter**

　　　As an initial matter, it is noted that according to the Patent Office, the concise explanations under this section are for Board convenience, and do not supersede what the claims actually state, 69 Fed. Reg. 155 (August 2004), see page 49976. Accordingly, nothing in this Section should be construed as an estoppel that limits the actual claim language.

　　　Claim 1 sets forth a method of displaying a video content frame within a WEB browser based content frame in a windowless environment. The method includes generating a transparent section in the browser based content frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16) and overlapping

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the video content frame in the transparent section of the browser based content frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

Claim 4 recites a method of handling a video media event in a windowless Web browser system that includes detecting a video media event (page 3, line 11; see also figures 7 and 9). The method also includes generating a transparent section in the browser frame, and overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

Claim 7 requires a method for handling a video media event in a windowless Web browser system in a television set top box (reference numeral 22, figure 1; page 5, line 9) that includes detecting a video media event (page 3, line 11; see also figures 7 and 9), generating a transparent section in the browser frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16), and overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

Claim 11 recites an article or manufacture (e.g., 22, figure 2; page 7, lines 1-5) for use in displaying a video content frame within a WEB browser based content frame in a windowless environment. The article of manufacture includes computer readable storage media (e.g., the various media including reference numerals 172 and 176 in figure 2 and listed on page 7, lines 1-5) including program logic embedded therein that causes control circuitry to generate a transparent section in the browser based content frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16), and overlap the video content frame in the transparent section of the browser based content frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

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Claim 14 sets forth an article or manufacture (e.g., 22, figure 2; page 7, lines 1-5) for use in handling a video media event in a windowless Web browser system. The article of manufacture has computer readable storage media (e.g., the various media including reference numerals 172 and 176 in figure 2 and listed on page 7, lines 1-5) including program logic embedded therein that causes control circuitry (e.g., the CPU 132, figure 2, page 7, line 1) to detect a video media event (page 3, line 11; see also figures 7 and 9), generate a transparent section in the browser frame (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16), and overlap a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

Claim 17 recites an article of manufacture for use in handling a video media event in a windowless Web browser system in a television set top box (22, supra). The article of manufacture comprises computer readable storage media (e.g., the various media including reference numerals 172 and 176 in figure 2 and listed on page 7, lines 1-5) including program logic embedded therein that causes control circuitry (e.g., the CPU 132, figure 2, page 7, line 1) to perform the steps of detecting a video media event (page 3, line 11; see also figures 7 and 9), generating a transparent section in the browser frame, (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16), and overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event (page 14, lines 21-25; figures 7 and 9 and discussions on pages 14-16).

Claim 21 recites an apparatus (e.g., the TV 24, figure 1; page 5, line 8) for displaying a video content frame within a WEB browser based content frame in a windowless environment. The apparatus has means (e.g., the CPU 132, figure 2, page 7, line 1 as programmed in accordance with the flow charts) for generating

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a transparent section in the browser based content frame, and means (the programmed CPU 132) for

overlapping the video content frame in the section of the browser based content frame.

Claim 24 recites an apparatus (e.g., either the STB 22 or TV 24, supra) for handling a video media

event in a windowless Web browser system that includes means (e.g., programmed CPU 132 supra) for

detecting a video media event, means (e.g., programmed CPU 132, supra) for generating a transparent section

in the browser frame means (e.g., programmed CPU 132, supra) for overlapping a video content frame in the

transparent section of the browser frame where the video content frame is generated from the video media

event.

Claim 27 sets forth a television set top box (22, supra) that operates a windowless Web browser

system (100, figure 1) having means (e.g., programmed CPU 132, supra) for detecting a video media event,

means (e.g., programmed CPU 132, supra) for generating a transparent section in a browser frame (e.g.,

programmed CPU 132, supra), and means (e.g., programmed CPU 132, supra) for overlapping a video content

frame in the transparent section of the browser frame wherein the video content frame is generated from the

video media event.


(6)     **Grounds of Rejection to be Reviewed on Appeal**

     (a)     Claims 1-22 and 24-30 have been rejected under 35 U.S.C. §103 as being unpatentable

over Anderson et al., USPN 6,219,042 in view of Gerba, USPN 6,445,398, relying on the picture-in-

graphics (PIG) teaching of Gerba at col. 27, lines 5-20 to provide a teaching of a transparent section,

admittedly missing in Anderson et al.

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      (b)     Claim 23 has been rejected under 35 U.S.C. §103 as being unpatentable over

Anderson et al. in view of Gerba and Houghton et al., USPN 6,757,707.

(7)    **Argument**

      As an initial matter, it is noted that the substance of the arguments below related to the independent

claims already have been presented to the examiner, and have been rejected. Accordingly, reopening of

prosecution is not expected. Should prosecution be reopened under these circumstances, explanation will be

sought from the Tech Center Director.

**First Ground of Rejection**

      Anderson et al., as admitted by the examiner, does not use a transparent portion of anything at all;

Gerba et al. uses a transparent portion but not in a browser, and in fact nowhere mentions that its method can

be used in a browser, much less how one might render a portion of a browser to be transparent to undertake

the present claims. Accordingly, the first defect of the rejections that render them reversible is the non-

enablement of the present claims by the references ("to render a later invention unpatentable for obviousness,

the prior art must enable the later invention", noting that the question wasn't whether the prior art enabled

itself but rather whether it enabled the invention being rejected, In re Kumar, 418 F.3d 1361 (Fed. Cir. 2005)).

      This leads into the next defect of the rejections. The reason that Gerba uses the relied-upon

transparent portion (essentially, a transparent portion of program guide) to display video in is to allow viewing

of a program at the same time the title appears on the program guide, Gerba. col. 27, lines 5-15. Anderson

et al., however, is directed to viewing a TV pane in a browser window, and is not concerned with displaying

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a program along with a program guide listing the title of the program. Similarly, the relied-upon portion of

Gerba is not directed to showing TV programming on a browser but only to providing a convenient way for

a viewer to see a program at the same time he can also see the title of the program without having to move

his eyes, Gerba, id. Accordingly, since Anderson et al. admittedly does not contemplate a transparent section

of the browser and since Gerba is directed to a different problem than both Anderson et al. and the present

claims, and does not suggest its transparency concept for use in a browser-based environment, there is no

proper prior art suggestion to combine the references as proposed.

    With greater specificity, more is required in satisfying the MPEP than an observation that the proposed

modifications "would have been obvious to one skilled in the art". Rather, in seeking to establish a prima

facie case of obviousness, it must be identified where the prior art provides a motivating suggestion to make

the modifications proposed, In re Jones, cited at MPEP §2143.01. In other words, the required suggestion,

whether express or implied, must nevertheless be particularly found in the prior art, not the Examiner's

sagacity ("One cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior

art" In re Fine, id. The mere fact that a reference can be modified does not render an invention obvious,

unless the modification is suggested by the prior art, In re Mills, id. Indeed, the motivation to combine

references requires a showing from the prior art of what is desirable, not merely what is feasible, Winner Int'l

Royalty Corp. v. Wang, 202 F.3d 1340 (Fed. Cir. 2000), and here, Gerba nowhere teaches or suggests in the

relied-upon portion that its transparency concept is feasible, much less desirable, in a browser.

    Looked at another way, even if the references were combined in some unsuggested fashion, the present

claims would not result. Instead, an odd combination flowing from the teachings of the references would be

produced wherein a TV window would be superimposed over a Web browser display as taught by Anderson

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et al., and then, presumably in another window, a TV program would appear in a transparent portion of a program guide *sans* browser as taught by Gerba. In any case, the present claims would not result.

The examiner has alleged that Gerba "provided a reason for combining its teaching with another reference and that is to allow moving video to be viewed when it is overlapped by another window", citing col. 27, lines 4-6. That allegation misstates Gerba and thus betrays the hindsight reconstruction that underpins the proposed combination of references. Gerba col. 27, lines 4-6 (or anywhere else as far as Applicant can discern) does not state "allowing moving video to be viewed when it is overlapped by another window". That is an overbroad characterization of Gerba's teachings that is not supported by the reference. Instead, as analyzed above Gerba does not broadly contemplate what is alleged but rather simply allowing viewing of a program at the same time the title appears on the program guide, Gerba. col. 27, lines 5-15, whereas Anderson et al. is directed to viewing a TV pane in a browser window, and is not concerned with displaying a program along with a program guide listing the title of the program. The fact that Anderson might contemplate a separately presented program guide is thus irrelevant. Gerba nowhere mentions that its principles might be extended to browsers, and Anderson nowhere mentions using a transparent section of a browser window, much less to overlay a program guide or anything else on the transparent section. Trying to shoehorn a non-existent suggestion to combine out of two disparate and unrelated references is the *sine qua non* of impermissible hindsight reconstruction.


### Second Ground of Rejection
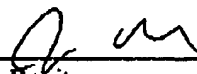
For the reasons above, dependent Claim 23 is patentable.


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## APPENDIX A - APPEALED CLAIMS

1. A method of displaying a video content frame within a WEB browser based content frame in a windowless environment, comprising the steps of:

a) generating a transparent section in the browser based content frame; and

b) overlapping the video content frame in the transparent section of the browser based content frame.

2. The method of displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 1, wherein the displayed size of the video content frame is smaller than the displayed size of the browser based content frame.

3. The method or displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 2, wherein video content is related to the browser based content.

4. A method of handling a video media event in a windowless Web browser system, comprising the steps of:

a) detecting a video media event;

b) generating a transparent section in the browser frame; and

c) overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event.

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5. The method or handling a video media event in a windowless Web browser system of claim 4, wherein step

b) includes:

a) decoding the video frame size from the video media event; and

b) decoding the source of the video signal to be displayed in the video content frame from the video media

event.

6. The method of handling a video media event in a windowless Web browser system of claim 5, wherein step

b) further includes decoding the video frame location within the browser frame from the video media event.

7. A method or handling a video media event in a windowless Web browser system in a Television set top

box, comprising the steps of:

a) detecting a video media event; and

b) generating a transparent section in the browser frame; and

c) overlapping a video content frame in the transparent section of the browser frame where the video content

frame is generated from the video media event.

8. The method of handling a video media event in a windowless Web browser system in a Television set top

box of claim 7, wherein step b) includes:

a) decoding the video frame size from the video media event; and

b) decoding the source of the video signal to be displayed in the video content frame from the video media

event.

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9. The method of handling a video media event in a windowless Web browser system in a Television set top box of claim 8, wherein step b) further includes decoding the video frame location within the browser frame from the video media event.

10. The method of handling a video media event in a windowless Web browser system in a Television set top box claim 9, wherein step b) includes directing a tuner to tune to the source of the video signal to be displayed in the video content frame.

11. An article or manufacture for use in displaying a video content frame within a WEB browser based content frame in a windowless environment, the article of manufacture comprising computer readable storage media including program logic embedded therein that causes control circuitry to perform the steps of:

a) generating a transparent section in the browser based content frame; and

b) overlapping the video content frame in the transparent section of the browser based content frame.

12. The article of manufacture for use in displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 11, wherein the displayed size of the video content frame is smaller than the displayed size of the browser based content frame.

13. The article of manufacture for use in displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 12, wherein video content is related to the browser based content.

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14. An article or manufacture for use in handling a video media event in a windowless Web browser system, the article of manufacture comprising computer readable storage media including program logic embedded therein that causes control circuitry to perform the steps of:

a) detecting a video media event;

b) generating a transparent section in the browser frame; and

c) overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event.

15. The article of manufacture for use in handling a video media event in a windowless Web browser system of claim 14, wherein step b) includes:

a) decoding the video frame size from the video media event; and

b) decoding the source of the video signal to be displayed in the video content frame from the video media event.

16. The article or manufacture for use in handling a video media event in a windowless Web browser system of claim 15, wherein step b) further includes decoding the video frame location within the browser frame from the video media event.

17. An article of manufacture for use in handling a video media event in a windowless Web browser system in a Television set top box, the article of manufacture comprising computer readable storage media including program logic embedded therein that causes control circuitry to perform the steps of:

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a) detecting a video media event; and

b) generating a transparent section in the browser frame; and

c) overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event.

18. The article of manufacture for use in handling a video media event in a windowless Web browser system in a Television set top box of claim 17, wherein step b) includes:

a) decoding the video frame size from the video media event; and

b) decoding the source of the video signal to be displayed in the video content frame from the video media event.

19. The article or manufacture for use in handling a video media event in a windowless Web browser system in a Television set top box of claim 18, wherein step b) further includes decoding the video frame location within the browser frame from the video media event.

20. The article of manufacture for use in handling a video media event in a windowless Web browser system in a Television set top box of claim 19, wherein step b) includes directing a tuner to tune to the source of the video signal to be displayed in the video content frame.

21. An apparatus for displaying a video content frame within a WEB browser based content frame in a windowless environment, comprising:

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a) means for generating a transparent section in the browser based content frame; and

b) means for overlapping the video content frame in the section of the browser based content frame.

22. The apparatus for displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 21, wherein the displayed size of the video content frame is smaller than the displayed size of the browser based content frame.

23. The apparatus for displaying a video content frame within a WEB browser based content frame in a windowless environment of claim 22, wherein video content is related to the browser based content.

24. An apparatus for handling a video media event in a windowless Web browser system, comprising:

a) means for detecting a video media event;

b) means for generating a transparent section in the browser frame; and

c) means for overlapping a video content frame in the transparent section of the browser frame where the video content frame is generated from the video media event.

25. The apparatus for handling a video media event in a windowless Web browser system of claims 24, wherein the means for generating a transparent section in the browser frame includes:

a) means for decoding the video frame size from the video media event; and

b) means for decoding the source of the video signal to be displayed in the video content frame from the video media event.

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26. The apparatus for handling a video media event in a windowless Web browser system of claim 25, wherein the means for generating a transparent section in the browser frame further includes means for decoding the video frame location within the browser frame from the video media event.

27. A television set top box that operates a windowless Web browser system, comprising:

a) means for detecting a video media event; and

b) means for generating a transparent section in a browser frame; and

c) means for overlapping a video content frame in the transparent section of the browser frame wherein the video content frame is generated from the video media event.

28. The television set top box that operates a windowless Web browser system of claim 27, wherein the means for generating a transparent section in a browser frame includes:

a) means for decoding the video frame size from the video media event; and

b) means for decoding the source of the video signal to be displayed in the video content frame from the video media event.

29. The television set top box that operates a windowless Web browser system of claim 28, wherein the means for generating a transparent section in a browser frame further includes decoding the video frame location within the browser frame from the video media event.

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30. The television set top box that operates a windowless Web browser system of claim 28, wherein the means

for generating a transparent section in a browser frame includes means for directing a tuner to tune to the

source of the video signal to be displayed in the video content frame.

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## APPENDIX B - EVIDENCE

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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## APPENDIX C - RELATED PROCEEDINGS

None (this sheet made necessary by 69 Fed. Reg. 155 (August 2004), page 49978.)

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